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Abstract

With the liberalisation of European Broadcasting from the 1980s and the early identification by new commercial channels of sporting events as key content to encourage viewing/subscription the relationship between sports and media organisations has inevitably become closer and more lucrative. However with the amendment of the Television Without Frontiers directive in 1997 a new element - the state - entered the equation, rendering it all the more complex.

This paper demonstrates the extent to which in the modern era sports journalism can only offer a truly comprehensive account of events by adopting approaches more commonly associated with business and political journalism. It does so by examining the biggest Irish "sports" story of 2002: not the Irish teams participation in the World Cup but the subsequent sale of broadcast rights for that team's home games to BSkyB. The narrative throws light on the increasingly complex relationship between sport, commercial and public service media, and the state but also details an extremely novel application of the Television Without Frontiers directive by the Irish state.

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On July 5 2002, three weeks after the Republic of Ireland football team had returned from the World Cup in Asia, the Football Association of Ireland (FAI) announced that they had sold BSkyB exclusive live television rights to Republic of Ireland home internationals for the next four years. The statement went on to note that deferred coverage rights had been sold to TV3, Ireland's only privately owned¹ free-to-air commercial broadcaster. The deal would immediately affect Ireland's upcoming round of European Championship qualifying matches.

The Irish public response was outrage: hitherto such matches had been available on a live free-to-air basis via RTÉ, the Irish public service broadcaster. Now fewer than one in six homes – those with access to BSkyB's subscription services – would be able to see such matches. Parents without Sky subscriptions complained that their children would have to go to pubs to watch the game (as many Irish public houses draw in punters through offering the opportunity to watch Sky's Sports Channels). Depending on your perspective, access to a key element of national culture had been sold for a mess of potage by the FAI or stolen by BSkyB. Public opprobrium was poured on both organisations although the FAI was particularly singled out for the underhand way in which it was perceived to have negotiated the deal. On the defensive the FAI in turn blamed RTÉ, pointing out that at a time when the organisation was seeking to develop the game in Ireland, the €7.5m offered by BSkyB far exceeded the €1.6m offered by the state broadcaster (O'Sullivan, 2002). Indeed the FAI pointed out that RTÉ's offer was lower than the amount the public service broadcaster had paid for the previous four years' matches. RTÉ in turn defended their position by arguing that the value of sports rights was falling internationally pointing

¹ TV3 is jointly owned by CanWestGlobal (45%) and GranadaCarlton (45%).

to the then recent collapse of OnDigital deal with the Nationwide League in the UK which had seen a deal originally worth £UK315m replaced with an offer from BSkyB of £UK90m. Meanwhile several government ministers including the Minister for Communications, the Minister for Sport and ultimately the Irish premier, all expressed their disappointment at the deal but glumly averred that the state had no means of intervening in the situation.

In passing each of the politicians acknowledged that 1997 amendments to the European Union's "Television Without Frontiers" directive empowered EU member states to draw up a list of events which had to be made available on a free-to-air basis. Furthermore they acknowledged that these powers - granted under section 3a of the directive - had been transposed into Irish law three years earlier via the Broadcasting (Major Events Television Coverage) Act 1999. Nonetheless they stressed that despite strenuous negotiations with a range of sporting bodies representing soccer, rugby and gaelic games over the previous three years they had been unable to come up with a list satisfactory to all the parties concerned.

And that apparently was that – the Football Association of Ireland clearly anticipated that, having announced the deal on late on a Friday afternoon, it would have blown over by end of the weekend. That it didn't reflected two things: firstly the fact games involving the national team were widely regarded as events binding the country together. As one commentator put it:

The Irish home internationals, while not as popular as World Cup games, are still the kind of events that draw whole families and communities around their television sets. In the atomised media age in which we live, there are not many events like that any longer (Oliver, 2002).

But secondly, the story lent itself to coverage from a range of perspectives reflecting the different constituencies represented by the various institutions involved in the story. These institutions were the FAI, RTÉ, BSkyB and the Irish State. To understand why the story "grew legs" but also the complexity involved in properly covering it, we need to briefly outline each institution's role and perspective on the story and the role played by the Television Without Frontiers Directive in domestic broadcasting regulation.

Television Without Frontiers

The main intention of the original 1989 version of the TWF directive was to facilitate the creation of a single European market in audiovisual trade. The preamble to the directive stressed that:

...it is essential for Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes. (European Council, 1989)

In the original 1989 version of the directive the third article forms two short paragraphs which qualify stipulations laid down in the directive other articles. Clearly reflecting the principle of subsidiarity, it permits individual member states to "lay

down more detailed or stricter rules” than those embodied in the directive (European Council, 1989).

As amended in 1997, however, Article 3 becomes much more substantial. It also creates an exception to the directive’s attempt to do away with barriers to trade in audiovisual products. The amended Article 3a states that:

Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. (European Council, 1997)

In effect the article permits member states to insist that specific cultural or sporting events be broadcast to their citizens on a free-to-air basis. Furthermore it enjoined other Member States to ensure that broadcasters in their jurisdiction did not exercise exclusive rights so as to deprive the public in another Member State of the possibility of watching events designated by that other Member State on a free-to-air basis.

In passing it’s worth noting that the directive thus embodies the European Union’s occasionally schizophrenic attitude towards the audiovisual industry (albeit one justified by the dual nature of the industry). Whereas the main intent of the directive is to remove artificial obstacles to audiovisual trade within the EU, Article 3a echoes the line consistently adopted by the EU since the 1993 GATT negotiations: that cultural products cannot simply be treated as commodities.

The remainder of the article outlines the mechanics of how such events could be protected. Member States were to notify the Commission of any list of events drawn up. In turn the Commission was obliged to seek the opinion of another innovation introduced by the 1997 amendment – a Contact Committee constituted by “competent authorities of the Member States” – as to the appropriateness of the list. Finally the Commission was given three months in which to inform the relevant Member State as to whether the list was acceptable or not. As of 2002 five countries had submitted lists to the Commission: Germany, Italy, the UK, Austria and Denmark and a further three (the Netherlands, Belgium and France) had notified the Commission of their intention to adopt similar lists (Commission of the European Communities (CEC) 2003).

The size and variety of lists varied from country to country: the UK listed 19 separate events whilst Germany listed just five. Virtually all the lists included the Olympics, and soccer’s World Cup/European Championships. Indeed the bulk of the events listed were of a sporting nature, although in Italy and Austria several musical events were also included.

Until 2002 the application of Article 3a in individual Member States had been relatively straightforward. Indeed the only substantive block to the Article’s operation came at the behest of a Member State rather the Commission: on 1 January 2002 the new conservative Danish government revoked the list drawn up by their socialist predecessors on the grounds that they “considered that the arrangement in question

was not compatible with free competition on the market” (Ministry of Culture – Denmark, 2003).

This then is the European legislative context in which the Sale of Irish television rights took place. What then was the role of the key players in the deal?

The Football Association of Ireland

Prior to 1988 the Republic of Ireland had never qualified for a major international championship. However after qualifying for the 1988 European Championships the team went on to qualify for the 1990, 1994 and 2002 World Cups. The net effect of this was that the FAI, an organisation run in part by volunteers or part-time staff, was forced to professionalise its own activities, a process not without its growing pains – the FAI was roundly criticised for its failure to capitalise financially from the team’s involvement in the 1990 and 1994 World Cups. Nonetheless as the 1990s progressed lessons were learnt - the FAI would net in the region of €1m from the Republic of Ireland’s involvement in the 2002 World Cup (Dooley, 2002).

This professionalism was also evident in the manner in which the FAI adapted to a changing international market for sports rights. In September 1994, the FAI signed a four year deal with RTÉ which renewed what was by then regarded as the station’s customary coverage of the Republic’s international home games. The value of the 1994 deal was never published but according to a joint FAI/RTÉ statement the sum involved was "a significant increase on the previous sum, and substantial" (Thornley 1994). This deal was further eclipsed by another agreement in 1996 which - at the time – was the biggest in the history of the RTÉ Sports Department. Nonetheless the sums involved in any of RTÉ’s deals with the FAI would clearly be eclipsed by the BSKyB deal in 2002. From a commercial perspective the FAI had apparently been extremely successful, given that it had secured an offer of €7.5m from BSKyB for its rights in comparison with the €1.2m offered by RTÉ. To have used the latter offer as a means of leveraging €7.5m from BSKyB seemed some achievement.

The scale of the negative public response to the BSKyB deal makes it clear that the professionalism exhibited in negotiations had not yet extended to the FAI’s Public Relations operations. In contrast to the PR savvy demonstrated in the English and Scottish professional leagues (where many of the Republic of Ireland’s players ply their trade), the FAI has, at least until recently a history of scoring PR own-goals. Although Boyle, Dinan and Morrow (2002) note with regard to the English and Scottish Football leagues that the closed world of football journalism is “perhaps beginning to be transformed as the influence of agents and PR increases,” this influence was in its infancy within the FAI at the time of the sale of the rights relating to the Irish team.²

² For example in the 12 months leading up to June 2002 the FAI had been roundly savaged in the press for its involvement in an abortive (but expensive) attempt to establish a new national soccer stadium. Furthermore when the star player of the Republic of Ireland side was sent home from the Irish team’s Saipan World Cup training camp before the team’s first match following a highly public dispute with the manager, somehow the FAI again took the brunt of the blame. In the wake of what became known as “the Saipan meltdown”, the organisation had belatedly employed the services of an independent PR consultant. See Humphries 2003.

In consequence the release of the news about the television deal was not handled well. The timing was appalling: on June 16, 773,000 viewers had watched the team suffer a glorious defeat at the hands of the Spanish team and exit the World Cup in its second round. 100,000 people turned up in Dublin's Phoenix Park to welcome the team home a few days later. These events were still fresh in the public mind when the FAI announced the BSkyB deal three weeks later. Furthermore the FAI's initial announcement made scant effort to place a positive spin on the fact that four years worth of games were about to become unavailable to the majority of the population: rather it adopted a petulant tone, blaming the loss of the games on RTÉ's failure to come up with a realistic offer.

A more positive spin was offered later but only in response to a week of public outrage expressed through the letters pages of the national press and radio phone-in shows. In consequence the FAI's more nuanced justification for the deal - which focused on the need to invest in schools soccer, upgrading the national coaching system and investing in facilities and infrastructure around the country - largely fell on deaf ears. In effect in the furore over the BSkyB deal the fact that the FAI had acted not merely like a professional organisation but also as a business was lost.

Also lost in the furore, however, was the FAI's reading of the state's failure to designate the home internationals as per Article 3a of TWF (or Article 4 of the Irish legislation which transposed the article into domestic law) in the five years since the directive had been amended. Quite reasonably FAI took this to mean that they could enter negotiations with organisations like BSkyB without political interference. This was not to be the case.

RTÉ's position

The reaction of the Irish public service broadcaster to the BSkyB deal was to seek to portray itself as the victim of bad faith. RTÉ asserted that the FAI had signed the BSkyB deal whilst still nominally negotiating with RTÉ (an assertion refuted by the FAI). However, reading between the lines, it appeared that the broadcaster was also reeling from shock: there was a sense that the station had operated under the assumption that such a loss simply would not happen.

Such confidence is reflected in the specific terms of earlier deals between RTÉ and the FAI. The 1994 RTÉ/FAI deal was due to run until 1998 but only guaranteed the station coverage of one competitive game in either the World Cup or European Championship qualifying series. In practice RTÉ had covered virtually every game in the qualifying rounds of the respective 1994 and 1996 World and European championships and it appears that both RTÉ and the FAI had simply assumed that this would be the case. The casualness of the deal's terms appeared to reflect RTÉ's confidence that its de facto status as a television broadcasting monopoly meant that a deal with more specific terms was unnecessary. In some respects the relationship paralleled that which existed between the English FA and the BBC/ITV duopoly prior to the establishment of BSkyB: when the English League attempted to dictate terms relating to television rights at the beginning of the 1985/86 season, both the BBC and ITV simply ceased broadcasting live matches until the League – suitably chastened – returned to the negotiating table (Baimbridge, Camerson and Dawson, 1996).

Similarly in 1994 RTÉ was apparently able to dictate terms to the FAI, a fact that must have chafed with the latter organisation

However if in 1994 RTÉ were apparently immune to the threat with regard to broadcast sports rights posed by corporate interests such as the Kirch group and BSkyB the same was not true two years later. Midway through the '94-'98 deal, motivated in part³ by speculation that BSkyB was considering bidding to secure exclusive broadcasting rights to all Ireland's home games, RTÉ re-entered negotiations with the FAI. The result was a deal – the biggest hitherto negotiated by RTÉ Sport - entitling RTÉ to cover all home games played by the Republic of Ireland, competitive or otherwise, until 2002 (Byrne, 1996).

Between 1996 and 2002 however, RTÉ, like public service broadcasters across Europe, continued to see new commercial competitors emerge. By European standards RTÉ's status as a television monopoly had been unusually longlived. Although legislation ending the station's state-mandated monopoly in television broadcasting was passed in 1988, it wasn't until 1998, that the first private television station –TV3 - took to the air. Given the clear and present danger posed by TV3 and BSkyB, it appears surprising that RTÉ station didn't take the threat of competition within the Irish market more seriously when negotiating with the FAI in 2002.

However, the station was financially ill-equipped to face such competition. In the 1990s RTÉ not only faced more competition but also competition of a different nature than hitherto. In theory RTÉ had operated in a competitive environment since its inception in 1961 as viewers living on the east coast of Ireland already had access to both the BBC and ITV output. And as new channels came into being in the UK in the following decades they have almost automatically become available to the Irish audience. This tacit competition with UK channels for audiences did not extend to competition for advertising revenues, however: RTÉ retained a de facto monopoly in Irish television advertising market until the 1990s. However as competition within the UK market in particular heated up in the early 1990s - with the arrival of Sky and Channel 5 - the established UK terrestrial stations began to consider new markets. Hence in 1993, both UTV⁴ and Channel 4 began canvassing for advertising from Irish companies (Foley, 1993). As of early 2004, MTV, Sky One, E4 and Nickleodeon were also offering Irish advertisers local opt-outs during ad-breaks to allowing them to target ads to Irish audiences.

The net effect of this on RTÉ has been dramatic. Not only has the station lost market share⁵ but it is losing advertisers. In theory this shouldn't be an overriding concern for RTÉ: as a public service broadcaster the station could expect to be at least partially shielded from the demands of the market by the licence fee. However at the time of the BSkyB deal successive government refusals to countenance a licence fee increase meant that the Irish television licence was one of the cheapest in Europe: this had forced the station to look to commercial sources for funding. Thus by 2002 70% of

³ The renegotiation may also have reflected the first attempt by RTE's long-time head of sport Tim O'Connor, to retire. O'Connor did ultimately retire in 99/2000.

⁴ Holder of the ITV franchise for Northern Ireland.

⁵ In 1997 RTE's market share amongst those viewers with access to both UK and Irish stations (termed "multichannel viewers" in Ireland) was 45%. By February 2004, this figure had fallen to 39.1%. See AC Nielsen 1997 and 2004.

the station's annual income came from commercial sources (Flynn, 2002a, p. 170). Even with this the station was still losing money – in 2001 it recorded a deficit of €70m (Radio Telefís Éireann Authority, 2002, p. 50).

Ironically then precisely because the station was poorly financially equipped to engage in a rights bidding war its reliance on commercial income meant that the games were important not just to RTÉ's cultural mission as a public service broadcaster but also because of their potential advertising revenues. The average TVR for Ireland's World Cup qualifying games between September 2000 and October 2001 had been a healthy 13.7, despite the fact that several of the games took place during work hours against competition who wouldn't normally drag in an audience (Cyprus and Andorra). Thus the loss of the games to BSkyB was a double blow.

BSkyB's position

The position of BSkyB in the Irish affair is inevitably a complex one given its place in the intricate cross-media empire that is News International. NI owns 36% of BSkyB. It also owns the Sun, the Sunday Times and the News of the World, three British newspapers which enjoy substantial sales in the Irish Republic.

BSkyB operates on a number of levels in Irish Television. At one level it is simply a television channel: 57% of Irish Television Households have access to Sky One and Sky News, the station's unencrypted channels, although that figure rises to 91% in the Dublin region. Indeed such is their interest in the Irish Market that in Spring 2004 the station announced the production of a dedicated Irish news programme (Grainne Seoige, 2004). Meanwhile the station's three subscription sports channels enjoy household penetration rates of between 15% and 19%.

However BSkyB is also an important television service provider in Ireland - as of December 2003, 297,000 Irish homes subscribed to Sky's digital satellite service. This represents a remarkable success story for the company. Having only launched digital television in Ireland in 1999, Sky's subscriber base now accounts for more than 20% of all Irish homes and 75% of the domestic digital market (the rest being mainly accounted for by NTL's digital cable service) (Commission for Communications Regulation, 2003. p. 17). De facto then BSkyB is the dominant player in the Irish digital market, especially given the collapse of a government strategy to introduce Digital Terrestrial Television.

The company's digital strategy is reliant on attractive local content. Rupert Murdoch's identification of sport and movies as the battering ram that would gain entry for his channels into people's home has been repeated to the point of banality but it remains a key element in the strategic plans of his television interests. Thus although one doesn't need digital television to access the Sky Sports Channels, the manner in which Sky structures its various suites of channel offerings use the content of the Sports Channels to incentivise Sports Channel subscribers into installing Sky digital. The "ordinary" price for a Sky digital installation digital is €100 but if one opts for Sky's premium package (which includes all three sports channels plus two movie channels) that fee is dropped to an almost negligible €15.

Hence BSkyB's interest in Irish soccer. The channel had in any case already become somewhat unwillingly involved in funding Irish football some six years earlier. Under UEFA rules, in agreeing broadcast rights deals, a given country's football association must have the permission of other associations potentially affected by that coverage. Thus when the English FA sold the Premiership screening rights to BSkyB in 1992 in a deal which envisaged screening a hitherto unprecedented⁶ 60 live matches each year, they had to discuss the impact with the FAI. Since Premiership matches were widely watched in Ireland, the FAI were entitled to compensation for lost crowds at Irish games. Such payments could not be made in the form of cash, however: thus it was that in the early 1990s BSkyB put £IR1.5m into upgrading facilities at Irish grounds. Furthermore in 1999 BSkyB had purchased rights to screen the Republic of Ireland's home matches in the UK, in an attempt to appeal to the substantial Irish community living there.

As such the €7.5m offered by BSkyB made doubly good business sense: given the cost in 2002 of subscribing to Sky's Sports channels and the fact that the annual cost to BSkyB of the deal was €1.875m, Sky would only need an additional 3,000 - 4,000 subscribers to offset the cost of the deal. At a point when Sky had already secured 200,000-plus Irish subscribers, a further 3,000-4,000 seemed an entirely likely prospect.

The government's position

Of all the actors in this narrative the rationale for action (or indeed inaction) of the Irish government is most opaque. It is important to stress that the same Fianna Fáil/Progressive Democrat coalition in power at the time of the BSkyB deal had three years earlier introduced the Broadcasting (Major Television Events Coverage) Bill which transposed Article 3a of Television Without Frontiers into Irish law. Introducing the act, the then Minister for Arts, Heritage, Gaeltacht and the Islands, Síle de Valera, stressed that her intent was "to protect the major cultural and sporting events from pay-per-view". She acknowledged the concerns of event organisers regarding the impact of the legislation on their ability to negotiate television deals but countered this by noting, "it must be recognised that the citizen has rights too, and these must be safeguarded" (Mac Carthaigh, 1999). The short (five pages long) Bill won broad support from all parties in the Dil and passed uncontroversially into law in Autumn 1999.

At this point it was assumed that the next stage would be for the Minister to prepare list of protected events as the legislation required. Yet in the nearly three years between the passing of the legislation and the announcement of the FAI/BSkyB deal no list was drawn up. It is impossible to be say definitely why this should have been the case. One can reasonably disregard the possibility that the government didn't consider it urgent, if only because the period 1999-2002 saw recurrent warnings of the consequences of not drawing up the list. In 1998, 2000 and again in February 2002, Irish viewers were unable to watch Ireland's rugby matches against England in the Six Nations Rugby Championship. This came about as a result of a five year (1998-2002) deal between the English Rugby Football Union and BSkyB whereby the

⁶ The previous FA/ITV deal assumed the screening of 18 live matches per season. See Baimbridge, Camerson and Dawson 1996.

former sold the latter exclusive live screening rights to home games played as part of the Six Nations Championship. This led one Fianna Fáil Senator to publicly criticise Síle de Valera's failure to preserve the event for Irish viewers by nominating it as a cultural event (Thornley, 2002).

If even criticism from within the government's own party was unable to prompt some action it raises the question of what other interests might have been served by any failure to put the act into effect. Clearly these would have included the various sporting organisations that would potentially see their events included on a list – the FAI, the Irish Rugby Football Union and the Gaelic Athletic Association. Indeed the government would later explicitly state that the unwillingness of the organisations to agree to any list had been a major source of delay. However given that the 1999 legislation's entire rationale was based around the assumption that such organisations would not voluntarily commit to selling their games to free-to-air channels, it was never clear as to why the recalcitrance of the organisations could block the drawing up of a list. In any case the professed impotence of the Irish government in dealing with the FAI was somewhat belied by the Tánaiste (Deputy Prime Minister) Mary Harney who at the time disclosed that substantial amounts of grant aid were being afforded to the FAI by the same government.

This then points to another possible interested party - BSkyB and its owner Rupert Murdoch. The chilling effect of Rupert Murdoch on politicians has frequently been asserted (if less frequently demonstrated). In this regard, writers on political economy of the media frequently point to Tony Blair's trip to Hayman Island, Australia in 1995 to address the "massed ranks of News Corporation executives" (Curran and Seaton, 1997, p. 300) and to meet Rupert Murdoch himself. Although the details of the private meeting were never disclosed, some press comment assumed that the two agreed a deal whereby Blair agreed to soft-pedal restrictions on cross-media ownership (if and when he entered government) in return for guarantees relating to the editorial line of News International titles in the UK with regard to New Labour (Porter, 1995).

This is supported by Curran and Seaton's (1997, p. 366) point about Murdoch's ability to "weave his way past regulatory obstacles in Australia, the United States and Britain through a combination of political horse-trading, intimidation and charm."

However such a point is also supported by the apparently warm relationship between Murdoch and the current Irish administration. In June 2002, a month before the signing of the FAI/BSkyB deal Rupert Murdoch was in Ireland at the inauguration of a new News International printing plant in Kells, County Meath. He was welcomed to Ireland by the individual officially undertaking the opening – Fianna Fáil party Leader and Irish Prime Minister Bertie Ahern. In his opening address Ahern described Murdoch as "one of the world's foremost leaders in media who has been hailed as one of the most outstanding Australian figures of modern times" (Cullen, 2002). In an intriguing response given the temporal proximity of the television deal, Murdoch said it was hard to think of anywhere more conducive to business than the Republic (Smurfit, Murdoch, 2002).

This meeting followed half a decades worth of support for the Fianna Fáil party (and Taoiseach Bertie Ahern in particular) from News International titles published in Ireland. Although historically Murdoch has been at pains to stress his non-interference

in the line taken by the editors of his newspapers, it nonetheless appears that the editors of the Irish editions of the Sun, the News of the World and the Sunday Times, share Murdoch's high opinion of the current government. For example, one unpublished study on the News of the World's political content tracked the political allegiance of those politicians invited to pen the paper's comment column, located on its editorial page. This study noted that of the 96 published comment pieces by Irish politicians between 1998 and 2000, 78 were written by Fianna Fáil TDs or Senators. By contrast the next largest party - Fine Gael - was invited to write just two pieces over the same period. The study also calls attention to an interview with Bertie Ahern, then opposition leader, published by the paper on 18th May 1997, one day after the calling of a general election. Under the heading "Ahern the Man for All Ireland" the front page, and two inside pages were given over to the interview which proclaimed that Bertie Ahern "could become a statesman to equal the legendary Eamon de Valera". However what is most striking is that the interview was conducted, not by the paper's Irish editor, but by a senior associate editor based in London, Alex Murunchak. Noting that Mr. Murunchak's by-line has not appeared in the Irish edition of the News of the World since the study points to similarities with the direct intervention by Rupert Murdoch to ensure that The Sun endorsed Tony Blair at the outset of the 1997 British General election campaign (Daly, 2002).

Yet recent political history in Ireland has reminded politicians of how fickle press support can be, particularly when government policy clashes with business interests owned by large-scale media organisations. In this respect it is worth noting that Ireland has the greatest level of concentration of press ownership in the European Union: the newspaper market is dominated by the Independent Newspaper Group which owns titles accounting for 70% Irish Sunday sales, 100% of the evening daily market and 49% of daily sales - including the best-selling daily in the country the Irish Independent.⁷ On the eve of the 1997 election, this last paper abandoned a half-century old pro-Fine Gael (then the leading party in a coalition government) editorial line, and urged voters to support Fianna Fáil. This dramatic shift was largely driven by the coalition's failure to prosecute those involved in establishing local television distribution services in rural areas. This arguably undermined the position of Princes Holdings, a cable company owned by Independent Newspapers. Fine Gael might have lost the election regardless of the Independent's editorial line but as Horgan (2001, p. 171) states, the "Payback Time" editorial "marked a watershed in Irish journalism which few would forget".

Nor is the influence of the News International Group in Ireland in this respect to be underestimated. The Irish Sun is now the second best-selling daily paper in Ireland. Meanwhile the two News International Sunday Titles – The Sunday Times and the News of the World – now account for more than 20% of all "Irish" Sunday sales (Audit Bureau of Circulation, 2003). Furthermore lest the Irish government was in any doubt as to how News International would view the furore over the deal, the Irish editions of both Sundays on weekend following the BSkyB deal distinguished themselves by – in contrast to every other paper's editorial line - arguing that the

⁷ Author's own calculations based on Audit Bureau of Circulation 2003 data. These percentages assume the Irish market is limited to domestically headquartered newspapers and thereby exclude Irish editions of UK titles. In the case where a newspaper is only part-owned by Independent Newspapers I have only included sales figures equivalent to the company's shareholdings in that title – e.g. 50% of the Irish Star's sales which Independent Newspapers co-own with the Express Group in the UK.

BSkyB deal was a good thing for soccer in Ireland. A writer in The Sunday Times' Irish edition noted that "the FAI deserves credit for another respectable leap towards financial viability" (O'Brien, 2002).

The Half-Time discussion

The extended public debate which followed the deal quickly resolved around a number of assumptions which were presented as common-sense. In crude terms these were that:

- The FAI were greedy
- RTÉ were cheap
- BSKyB were also greedy and culturally insensitive
- The government was inept

None of these things were straightforwardly true but they were understandable given that one had a story that could arguably only be completely told through combining the perspectives of a business correspondent, a political commentator, a sports editor and a media journalist.

The last fifteen years has clearly witnessed a transformation in financial context in which sports organisations operate - most overtly in BSKyB's acquisition of the rights to the English Premier League.⁸ In this regard Boyle et al (2002) make the point that many sports journalists are ill-equipped to report on the business of sport, lacking as they do basic knowledge of financial matters. This is reflected in the Irish context - criticisms of RTÉ's poor offer did not recognise that in economic terms subscription and free-to-air broadcasters were not operating in the same markets and that sporting rights were – by definition – worth more in a subscription market. Equally the question of whether the FAI was de facto a monopoly and could not expect to escape some regulation of its activities was not extensively discussed.

Indeed there was obviously also some confusion as to whether the story should be treated in business terms at all. Boyle et al have noted an increasing interest in the business of football across the media spectrum citing for example, The Financial Times' weekly sports page written by financial journalists. However, while there is a clear logic for doing this with regard to clubs like Manchester United, clubs which are also literally PLCs turning over £UK100m-plus turnovers (Manchester United, 2004), it's harder to determine how national sporting organisations which did not owe an allegiance to shareholders on the stock market- i.e. the FAI - should be treated.

Yet if Boyle et al conclude that many sports journalists are unable to adequately cover the business side of sports, the Irish case study suggests that the degree of subject specialisation which now characterises all journalistic work leaves many ill-equipped to deal with stories which revolve around politics, markets and sports. In particular the Irish case study points to the difficulties thrown up by a sports story so heavily effected by influence of domestic politics and European legislation on regulating cultural affairs.

⁸ In 1988 ITV paid the English Football League £11m for four years of television rights. When the rights were next negotiated in 1992, BSKyB bid - a then staggering - £191.5m for the same period of time. This rose again to £UK670m in 1997. See Cave and Crandall 2001.

This is evident from any examination of the government's response to the deal. Driven by a private recognition that it bore some measure of the culpability for the deal the state sought to distance itself from the entire affair. A series of announcements from a variety of government ministers sought to ensure that the news agenda portrayed the matter as purely in the hands of the FAI, BSKyB and RTÉ. Thus a day after the deal was announced Minister for Communications, Dermot Ahern, described it as a “devastating blow” adding that it had come as a “bolt from the blue” (McNally, 2002). Two days later again, the Minister for Arts and Sports, John O’Donoghue made it clear that the deal was a private one that that the government could not intervene in, describing the agreement as “done and dusted” (O’Sullivan, 2002). Having established this distance both the aforementioned Ministers and latterly the Taoiseach (who described the deal as “disenfranchising” Irish fans (Flynn, 2002c)) were in a position to express, variously, outrage and disappointment at the deal.

Over the first weekend of the story this media management was partly successful: the line adopted by most journalists was that the FAI had hoodwinked RTÉ and Irish fans. As Monday dawned, however, criticism began to emerge of the government’s lengthy failure to prevent the deal by listing the home internationals under the 1999 Broadcasting (Major Television Events Coverage) Act. Strikingly the initial reference to the 1999 Act did not come from a journalist: indeed it seems that no Irish print or broadcast journalist was aware of either the Irish legislation or the European directive it was based on. Instead the Act was pointed to more or less simultaneously by an opposition politician and the author of the current piece.

However with the legislation and the state’s failure to use it on the agenda, the government were forced to respond. They did so in a politically novel fashion: they criticised their own legislation with a series of assertions about its limitations. These were:

- That the legislation was “legally risky”.
- That it was impossible to designate entire tournaments under the legislation.
- That the consent of sporting or cultural rights holders such as the FAI was required before “their” events could be listed.
- That lists drawn up in other European countries had been rowed back on.
- That to list events under the legislation would effectively force sporting organisations to sell their television rights to RTÉ, thus undermining their bargaining position when striking deals on those rights.

However these assertions proved to be either incorrect or simply irrelevant. Points two and three were entirely inaccurate, and were apparently made without any reference to the relevant legislation. The point about the inability to designate entire tournaments stood out in this regard. There was nothing in either the Irish legislation, EU directives or actual practice in other countries which could be remotely construed in such a manner. The first assertion describing the legislation as legally risky was clearly a red herring - no legislative proposition is ever entirely without such ambiguity. Meanwhile the final assertion - although true - missed the core (indeed almost only) intent of that Broadcasting Act as explicitly stated by the minister who introduced the legislation in 1999: to ensure that the financial interests of cultural

organisations were not placed above the rights of citizens to participate in cultural events.

However, once again most journalists simply accepted these assertions regarding both the Irish and EU legislation as fact. There is a substantial literature on the extent to which journalists rely (and given deadline pressures arguably must rely) on official sources. However the Irish case study suggests that the state actively exploits this fact making misleading assertions on the assumption that no journalist will have the time to check them out, particularly if the story is one which involves dealing with several specialisms simultaneously.

However, this reliance on authoritative sources can work in more than one way. Six days into the story the current author wrote an opinion piece for The Irish Times which tentatively suggested that although the government had apparently missed the boat in terms of listing the Irish games that there was nothing in the domestic legislation specifically prohibiting the designation of games already subject to a deal between a sporting organisation and a subscription broadcaster (Flynn, 2002b). Two days later the Irish Times and RTÉ carried interviews with a senior European Commission official attached to Vivianne Redin's Education and Culture Directorate. The official, Christophe Forax, asserted that a list once published applied "to all events listed - even contracts signed beforehand" (Hennessy, 2002).

In passing one should note that, given the prior existence of the FAI/BSkyB deal, such designation would indeed have been "legally risky". Although Article 3a of TWF allows governments to draw up lists it notes that they should do so "in a clear and transparent manner *in due and effective time*" (italics added). Such retrospective designation also appeared to clash with the Irish constitution's stout defence of property rights. However the straightforward acceptance of Christophe Forax's comments by the Irish media pointed to another failure to actually read the European legislation. As a consequence, however, the government suddenly found it politically necessary to reconsider their position. Faced with an issue that wasn't going away the government apparently decided that their best bet was to adopt the role of the white knight belatedly rescuing Irish fans. Hence on July 13, days after his Minister for Sports' "done and dusted" comment, the Taoiseach presented the government's new line:

We are the sovereign government and there is legislation and an EU directive and it is quite clear. We cannot sit around and disenfranchise a large part of the population from seeing matches they are allowed to see. (Flynn, 2002c)

Yet the manner in which the government actually sought to turn the deal around suggests that the state was well aware of the very real legal risk in attempting to effectively render the FAI/BSkyB deal null and void.

Extra Time

The government followed the announcement of their determination to wrest back the games for Irish citizens by calling a series of private meetings with the country's major sporting organisations informing them of their intent to designate some of their games. Veiled references were made to the Attorney-General's view that the state had

some “legal options” regarding the deal. Predictably the organisations objected to any suggestion that deals might be undone by lists that had not been in existence at the time of the original deals were signed. However what made these meetings with the sporting organisations unusual is that both Article 3a of Television Without Frontiers and the 1999 Irish legislation refer to the power of member states/governments to dictate to *broadcasting organisations* with regard to designated events:

Each Member State may take measures in accordance with Community law to ensure that *broadcasters* under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society... (European Council, 1989)

4.-(1) Where a *broadcaster* under the jurisdiction of the state who is not a qualifying broadcaster acquires rights to broadcast a designated event, that broadcaster shall not broadcast the event unless the event has been made available to a qualifying [i.e. free-to-air]...(Government of Ireland, 1999)

If there was no reference to event organisers in this or any other article in the 1999 Irish legislation, what then was the point of these meetings?

The question was only finally resolved by the second major innovation introduced by the Irish state with regard to the workings of TWF – (the first being the notion that it permitted retrospective going forward designation of events). In October 2002, after months of consultation, the Irish government published a list of designated events which included Republic's home and away soccer European Championships and World Cup qualifying matches, the All-Ireland hurling and football finals, the Irish Derby and the Irish Grand National. However they also announced that they would need to amend the 1999 legislation to ensure that the games covered by the FAI/BSkyB deal would be made available on a free-to-air basis.

That amendment appeared in April 2003 via the Broadcasting (Major Events Television Coverage) (Amendment) Act. The second article of the new legislation covered the question of retrospection:

This Act applies to a designated event which is designated before or after the passing of this Act...*whether or not any agreement or arrangement has been entered into* between the event organiser and a broadcaster in respect of the acquisition by the broadcaster of the rights to the event. (Italics added) (Government of Ireland, 2003)

However the most significant change came with article 4 which now read:

Where an event has been designated...and if...the *event organiser* has not made an agreement or arrangement with a qualifying broadcaster to enable it to provide coverage on free television services with the state...a qualifying broadcaster may apply to the High Court...for an order directing the *event organiser* to give rights to the qualifying broadcaster to provide such coverage. (Italics added) (Government of Ireland, 2003)

In short the amendment shifted the focus of the exercise of the state's authority from the broadcasting organisations to the events organisers. In effect whilst the 1999 legislation would have brought the state into direct confrontation with B Sky B, the amendment set up a showdown with the Football Association of Ireland. In so doing the 2003 Amendment appears to exceed the authority granted to member states by Article 3a which doesn't appear to extend beyond authority over broadcasters.

The significance of this shift was entirely missed by the Irish media – not one report noted the changes in focus between the 1999 and 2003 legislation. However it's also not entirely clear as to whether the European Commission itself was aware of this shift when it gave approval to the Irish list (as it would do early in 2003). In Ireland's notification to the Commission published in the EU's Official Journal in April 2003, no reference is made to the Amendment Act. Instead the Commission's approval was based on a list drawn up under the 1999 legislation (CEC, 2003).

Yet it was the 2003 legislation that was to be used to enforce the current status quo. As of 2004 the FAI/B Sky B deal has been renegotiated such that Ireland's qualifying games at least are screened on both RTÉ (which eventually paid out €2.3m for the rights (Malone, 2003) and B Sky B Sports. Live rights to Ireland's other home games are still the exclusive preserve of B Sky B although Irish fans can view deferred coverage on TV3.

Yet if Christophe Forax's July 2002 assertion that Ireland's existing legislation was sufficient to permit retrospection we need to ask why this shift took place? One possible explanation is that it offered the Irish state a means of retrieving (some of) the Irish games at an acceptable political cost. That the current Irish administration might be reluctant to take on an organ of News International has already been pointed to. By contrast offending the FAI – a body already the villain of the piece in the public eye – was tolerable (especially given that parallel negotiations between the Irish government and the FAI relating to the building of a national stadium offered the government a certain degree of leverage in negotiating the retrospective designation of events. Although the B Sky B's €7.5m offer to the FAI represented a significant sum, it was dwarfed by the possible state investment into a national stadium).

Yet if political self-interest offers a partial explanation for the introduction of the 2003 Amendment, the state itself would offer a more explicit statement of its thinking in a document submitted to the European Commission in summer 2003. Following the publication by the European Commission of the Fourth Review of the Television Without Frontiers directive (CEC, 2003a) in January 2003, the Commission invited written contributions from interested parties on the conclusions of the Review.

The submission from the Irish State is one of the longest. The major thrust of the submission argues for a radical reinterpretation of Article 2 of the TWF directive which denies Member States the right to restrict retransmission on their territory of television broadcasts from other Member States. The Irish submission notes that in the era of cross-border broadcasting the:

ability of some Member States to have meaningful regulation at a national level will be eroded unless the Directive is revised to provide that services directed primarily at a given Member State are subject to the regulation of that

Member State. Ireland suggests that this should be achieved by determining a competent jurisdiction for each individual broadcasting service, instead of focussing on broadcasters. (Department of Communications, Marine & Natural Resources (DCMNR), 2003.)

In short the Irish submission argued that if a UK-registered company established a station explicitly targeting the Irish market then it should be regulated by the Irish state not a British regulator. As such the Irish submission suggests a reversal of one of the original directive's most fundamental tenets – that individual states should not have the power to regulate broadcasting services that were considered acceptable under another state's broadcasting regime.

This point forms the context for the submission's comments on Article 3a which also offer some clarification for the content of the 2003 legislation. (These are lengthy but deserve quoting in full):

...a UK broadcaster only requires the consent of the Independent Television Commission to purchase exclusive rights to an event after an event has been formally designated in another Member State. Thus according to the ITC code, it was possible for BSkyB to enter into a contract for exclusive live rights for Ireland's qualifying games in the Football World Cup and European Championship games without the consent of the ITC. However the subsequent designation of the events by Ireland did not, it would appear, require BSkyB to seek the approval of the ITC as the contract had already been entered into. There was therefore no retrospective effect.

In order to ensure that these games were made available to Irish free-to-air broadcasters, Ireland enacted new legislative provision which imposed obligations on sports event organisers to make broadcasting right available to qualifying broadcasters subject to the payment of reasonable market rates. (DCMNR, 2003)

The reference to the ITC is at the crux of the matter. As a UK-registered broadcaster BSkyB was subject to the Independent Television Commission. Clearly the Irish government had little faith in the ITC's ability/willingness to pursue BSkyB. However this seems overly pessimistic given the existence of a prior case where the ITC had gone to bat on behalf of another member state.

In June 2000 TVDanmark, a Danish subscription broadcaster outbid two Danish public broadcasters to secure exclusive rights five Danish World Cup qualifying matches. These were designated events under Danish legislation but the Danish authorities were unable to force TVDanmark to make the games available to either of Denmark's public service channels because TVDanmark was registered as a British company. As such it came within the regulatory ambit of the Independent Television Commission in the UK who went to House of Lords, the highest legal authority in the UK in an effort to force TVDanmark to offer the games on a non-exclusive basis to Denmark's public service broadcasters. TVDanmark, however, argued that it had acquired the rights to the Danish games in accordance with the ITC's own rules, a point conceded by the ITC. However the ITC had also consulted with the Danish Ministry of Culture which noted that under the Danish system for protecting listed

events TVDanmark's acquisition of the rights would not have been legal. Consequently the ITC decided to pursue TV Danmark under the Danish code: in effect a regulatory authority from one European country applied the - slightly different - rules of another regulatory authority in its own jurisdiction, a decision which House of Lords implicitly endorsed. The Lords ruling stated that the intention of Article 3a was "perfectly clear", namely:

to prevent the exercise by broadcasters of exclusive rights in such a way that a substantial proportion of the public in another member state was deprived of the possibility of following a designated event. (House of Lords, 2001)

Given prior evidence that the ITC was willing to go to bat on behalf of designated events in other member states, why was the Irish state unwilling to pursue that route?

This reluctance seems likely to have been prompted by concern over the question of retrospective designation. In the TVDanmark case, it appears that the ITC, whilst acknowledging the differences in the manner the UK and Denmark had implemented Article 3a, felt that that there was nothing in the Danish legislation which actually contravened Article 3a. However the same may not have been true of the Irish attempt to effect a retrospective "going forward" listing. As noted earlier Article 3a stresses the need to draw up such a list in a timely fashion. This is reflected in British Broadcasting Act 1996, section 101 of which was amended to effect Section 3a of TWF. Subsection 4 of section 101 noted that designations of events would "not have effect where the television programme providing the first service is exercising rights acquired before the commencement of this section." I.e. retrospective designation of events was not permitted.

Hence the Irish government passed a piece of legislation the preamble of which states that it will give "further effect to article 3a" but which appears to contravene aspects of precisely that article, by permitting retrospection and focusing on the obligations of event organisers rather than broadcasters.

The Final Whistle

The major question raised in the Irish public sphere by the BSkyB deal focused on the question of how and where one draws the line between sport as cultural event and sport as business. The role of the national side as an expression of national identity creates a strong attachment to that team from the national audience. This has implications for public service broadcasters. As one national newspaper commentator recognised with regard to the BSkyB deal: "what is particularly corrosive about this development for RTÉ is that it undermines its whole identity as a national broadcaster" (Oliver, 2002). If public service broadcasting is meant to mean anything, it is meant to mean broadcasters reflecting and covering truly national events which bind the country together. The loss of such important cultural or sporting makes RTÉ's attempts to remain a truly national broadcaster extremely difficult.

However the almost religious fervour excited by the Irish team amongst its home fans translates in commercial terms into content which can draw in audiences in a more or less guaranteed fashion. The scale of the vitriol hurled at the FAI seems in large part to have been motivated by the fact that the FAI's actions reminded fans of the painful

fact that commerce plays a considerable role in modern sport. This may be overt where the team in question is a PLC – the question is whether this should be case in dealing with national teams.

This confusion was reflected in press coverage at the time of the deal and – as noted earlier – in the failure to simultaneously examine the story from sporting, political and financial perspectives. However such failings were not simply the result of difficulties over journalistic demarcation. Although most of Ireland’s major daily and Sunday papers criticised the BSkyB deal most did so by treating BSkyB as a standalone company. The significance of cross-media ownership in the BSkyB deal was ignored by large elements of the Irish press: titles owned by the market-dominating Independent Newspapers Group seemed particularly reluctant to discuss the link between concentration of media ownership within and across media and political influence. Ironically then the FAI/BSkyB deal was a story that could only be completely understood by drawing attention to a subject – concentration of media ownership - that a major element of the Irish public sphere has an active interest in avoiding. The dominance enjoyed by Independent Newspapers did not emerge from a vacuum, however – one can argue that much of the weakness of the Irish public sphere derives from a consistent failure on the part of Irish governments to take regulation of media ownership seriously.

However the story also points up a weakness in another element of the Irish public sphere – RTÉ – one for which the state is more directly culpable. Following a major showdown between the state and RTE in 1972 which ended in the sudden removal of the RTE authority, the Irish public service broadcaster has generally been quiescent in its dealings with the government of the day. The situation whereby RTE’s licence fee was effectively frozen from 1986 to 1996 is thus understood “locally” as an attempt by the state to keep the broadcaster on a tight leash (Corcoran, 2004, pp. 98 - 103). The idea of a direct broadcaster-state confrontation along the lines of the BBC’s recent clash with the Blair administration over the death of weapons expert David Kelley, for example, is almost inconceivable in an Irish context. In this respect the timing of the BSkyB deal was particularly awkward for RTE, given its coincidence with delicate negotiations between the government and broadcaster over precisely the question of a licence fee increase. Such conditions were not conducive to the production of programmes discussing either the link between RTÉ’s financial position and their low offer to the FAI or broader issues such as the link between the government and News International. On the surface RTE’s situation with respect to future licence fee increase has subsequently been placed on a more secure footing: in the aftermath of the FAI/BSkyB deal RTÉ did in fact secure a substantial licence fee increase. What’s more they succeeded in convincing the government to index future increases to inflation. However such index-linked increases are not automatic but are subject to the government's assessment that RTÉ is meeting certain restructuring/public service requirements. In effect future increases remain in the gift of whatever administration happens to be in power.⁹ The implications for the objectivity of the Irish public service broadcaster in covering the state’s activities are worrying.

⁹ Actual practice bears this concern out. Although RTE was technically entitled to a 2.2% increase in its licence fee at the close of 2003, the government capped this at 1.5% citing concerns over RTE’s failure to sufficiently reduce staff numbers. See Oliver 2003.

Ultimately, however, the most important issue may be that thrown up by the discussion in the latter part of this paper, namely the extent to which TV Without Frontiers fails to address the issue of transnational services dedicated to a foreign state, a situation clearly not contemplated in the framing of the directive in 1989 or 1997. It has subsequently emerged that the Irish 2003 submission on TWF was simply the first salvo in a campaign to place the regulatory challenge of transnational broadcasters at the centre of the broadcasting policy agenda during Ireland's presidency of the EU in the first six months of 2004. Outlining his policy priorities for the presidency, the Irish Minister for Communications noted that:

We need a level playing field in the area of broadcasting. It is simply not on that satellite broadcasters are not regulated in the markets into which they broadcast. We need to be able to apply national measures to satellite broadcasters. (Government Information Service (GIS), 2004a.)

Specifically the Irish government has sought to table an amendment to TV Without Frontiers which would allow governments to regulate broadcasters who provide television services specifically targeted at viewers in another country. However, at an informal EU Ministerial Conference on Broadcasting held in Dublin on March 2-3, the Irish proposal met resistance from both the European Commissioner Vivianne Reding and indeed several other member states (GIS, 2004b). Although the Irish government's press release after the meeting suggested that the question was still open, Vivianne Reding's comments suggest otherwise:

The 'originating country' was responsible for regulation and licensing. "That is the general rule of the common market. It is not possible to change that," she said. (Oliver, 2004)

Given this outcome the essentially stopgap measure that was the 2003 Irish Broadcasting legislation looks set to remain in place creating an unusual (if not unique) negotiating environment for Irish sporting organisations. As both the FAI and Irish Rugby Football Union point out in their own submissions to the European Commission¹⁰ with regard to the retrospective going forward of Section II of the Broadcasting Bill 2003:

The way Section II is constructed means that there is no certainty from the point of view of anybody dealing with the Association in relation to contractual arrangements we conclude in the future for the broadcasting of our matches. At any stage in the future the Minister can create a new classification for matches other than qualification matches that we organise which would then retrospectively impact on any contractual arrangements we had already made in respect of those matches. From a commercial point of view this creates an unacceptable level of certainty for any broadcasters we may be dealing with. (Football Association of Ireland, 2003 & Irish Rugby Football Union, 2003)

¹⁰ Interestingly Satellite and Cable Broadcasters' Group (which included British Sky Broadcasting) also made a submission to the Commission but made no reference to article 3a or the Irish events.

It's hard to imagine that the original framers of Article 3a ever envisaged such an application of the article.

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